
UNITED STATES DISTRICT COURT**EASTERN DISTRICT OF TEXAS**

ELDRIDGE NICKSON, *et al.*

Plaintiffs,

*versus*MELENDIA COLE, *et al.*

Defendants.

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CIVIL ACTION NO. 9:18-CV-172

**ORDER OVERRULING PLAINTIFFS' OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiffs filed this civil rights action pursuant to 42 U.S.C. § 1983, the Americans with Disabilities Act, and the Rehabilitation Act against Melenda Cole, Polk County, Anthony Clevenger, and other Defendants who were previously dismissed from this action.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends granting Defendants' Motion for Summary Judgment, filed by Defendants Cole and Polk County.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

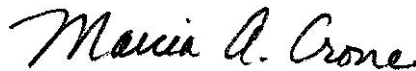
The court has conducted a *de novo* review of the objections in relation to the pleadings, the evidence, and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. Contrary to Plaintiffs' assertions, the court has

reviewed the evidence and finds that there are no genuine issues of material fact with respect to Plaintiffs' claims against Defendant Cole and Polk County. Plaintiffs have not established that Defendant Cole was deliberately indifferent to Antwaun Bogany's serious medical needs. Because Plaintiffs have not established a violation of Mr. Bogany's constitutional rights by Defendant Cole, she is entitled to qualified immunity. Plaintiffs also failed to demonstrate that Polk County had a policy or custom that resulted in a violation of Mr. Bogany's constitutional rights, or that Polk County was liable based on a failure to train theory. Finally, the evidence, viewed in the light most favorable to Plaintiffs, does not establish a violation of Mr. Bogany's rights under the Americans with Disabilities Act or the Rehabilitation Act.

ORDER

Accordingly, Plaintiff's objections (#118) are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (#116) is **ADOPTED**. Defendants' Motion for Summary Judgment (#84) is **GRANTED**. Defendants Melenda Cole and Polk County, Texas are **DISMISSED** from this action.

SIGNED at Beaumont, Texas, this 17th day of November, 2023.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE